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Edwin Negron d/b/a Metro Barbers and United Food and Commercial Workers Union, Local 1996, successor to United Food and Commercial Workers, Local No. 1063. Case 10-CA-31219

June 18, 1999

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Upon a charge and an amended charge filed by the Union on September 14, 1998, and March 8, 1999, respectively, the General Counsel of the National Labor Relations Board issued a complaint on April 6, 1999, against Edwin Negron d/b/a Metro Barbers, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge, amended charge, and complaint, the Respondent failed to file an answer.

On May 12, 1999, the General Counsel filed a Motion for Summary Judgment with the Board. On May 14, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated April 30, 1999, notified the Respondent that unless an answer was received by May 7, 1999, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

On or about June 1, 1997, the Respondent was awarded the business of Gino Morena Enterprises (Gino Morena), at Hunter Army Air Field located in Savannah, Georgia (the Hunter facility), and since then has continued to operate the business of Gino Morena in basically

unchanged form, and has employed as a majority of its employees individuals who were previously employees of Gino Morena at the Hunter facility. Based on this, the Respondent has continued the employing entity and is a successor to Gino Morena at the Hunter facility.

At all material times, the Respondent, a sole proprietorship, with a place of business at the Hunter facility, located in Savannah, Georgia, has been engaged in the operation of a barber shop. During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its business operations at the Hunter facility, provided services in excess of \$50,000 to the United States Government through the Army and Air Force Exchange Service. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, United Food and Commercial Workers Union, Local 1996, successor to United Food and Commercial Workers, Local 1063, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent, employed at the Hunter facility (the Hunter unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All barbers (excluding the base manager as well as guards and supervisors, as those terms are defined in the National Labor Relations Act) employed at the Company's barbershops at Hunter Air Force Base.

On or about January 1, 1995, United Food and Commercial Workers Union, Local 442 and Local 1063 (Local 1063), merged to become known as Local 1996. At all times from about April 1, 1988, based on Section 9(a) of the Act, Local 1996, or its predecessor, Local 1063, was the exclusive collective-bargaining representative of the Hunter unit employees employed by Gino Morena and the Respondent, and was recognized as such by Gino Morena and the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which, with Gino Morena, was effective from April 1, 1995 to April 1, 1998.

The Respondent, through Owner Edwin Negron on October 3, 1998, and Manager Lynette Gacitua on December 18, 1998, bypassed Local 1996 and dealt directly with employees at the Hunter facility in the Hunter unit with respect to terms and conditions of employment, by soliciting the employees to agree to a reduction in wages.

Since on or about March 15, 1998, the Respondent has failed and refused to recognize and bargain with Local 1996 as the exclusive collective-bargaining representative of the Hunter unit. Since at least on or about March 15, 1998, and continuing to date, the Respondent has failed and refused to remit benefit payments to the United Food and Commercial Workers International Sick

Benefit Plan, the United Healthcare, Inc. (eye and dental plan), and the United Food and Commercial Workers Union and Employers Legal Assistance Fund on behalf of the employees in the Hunter unit. Since at least on or about March 15, 1998, and continuing to date, the Respondent has failed and refused to directly pay holiday pay or vacation pay to the employees at the Hunter facility.

These subjects set forth above relate to wages, hours, and other terms and conditions of employment of the Hunter unit and are mandatory subjects for the purposes of collective bargaining. The Respondent unilaterally engaged in the conduct described above without prior notice to Local 1996 and without affording Local 1996 an opportunity to bargain with the Respondent with respect to this conduct.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the purposes of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1), we shall order the Respondent to recognize and bargain with Local 1996 as the exclusive collective-bargaining representative of its employees in the Hunter unit. We shall also order the Respondent to make its unit employees whole by making the required benefit payments to the United Food and Commercial Workers International Sick Benefit Plan, the United Healthcare, Inc. (eye and dental plan), and the United Food and Commercial Workers Union and Employers Legal Assistance Fund, including any additional amounts applicable to such delinquent contributions, in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).¹

¹ To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the respondent will reimburse the employee, but the amount of such reimbursement will

Further, we shall order the Respondent to pay the holiday pay and vacation pay to the unit employees at the Hunter facility that it has unlawfully failed and refused to pay, in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Edwin Negron d/b/a Metro Barbers, Savannah, Georgia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Local 1996 as the exclusive collective-bargaining representative of the Hunter unit. The appropriate unit consists of:

All barbers (excluding the base manager as well as guards and supervisors, as those terms are defined in the National Labor Relations Act) employed at the Company's barbershops at Hunter Air Force Base.

(b) Dealing directly with employees in the Hunter unit with respect to terms and conditions of employment by soliciting the employees to agree to a reduction in wages.

(c) Unilaterally changing conditions of employment for unit employees by failing and refusing to make benefit payments to the United Food and Commercial Workers International Sick Benefit Plan, the United Healthcare, Inc. (eye and dental plan), and the United Food and Commercial Workers Union and Employers Legal Assistance Fund on behalf of the employees in the Hunter unit.

(d) Unilaterally changing conditions of employment for unit employees by failing and refusing to directly pay holiday pay or vacation pay to the employees in the Hunter unit.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All barbers (excluding the base manager as well as guards and supervisors, as those terms are defined in the National Labor Relations Act) employed at the Company's barbershops at Hunter Air Force Base.

constitute a setoff to the amount that the respondent otherwise owes the fund.

(b) Make the required benefit payments to the United Food and Commercial Workers International Sick Benefit Plan, the United Healthcare, Inc. (eye and dental plan), and the United Food and Commercial Workers Union and Employers Legal Assistance Fund on behalf of the employees in the Hunter unit, as set forth in the remedy portion of this decision.

(c) Make whole unit employees for any loss of benefits or expenses ensuing from its failure to make the required benefit payments to the funds, as set forth in the remedy portion of this decision.

(d) Pay the unit employees vacation pay and holiday pay, with interest, as set forth in the remedy portion of this decision.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of back-pay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Savannah Georgia, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 15, 1998.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 18, 1999

Sarah M. Fox, Member

Wilma B. Liebman, Member

Peter J. Hurtgen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail and refuse to recognize and bargain with Local 1996 as the exclusive collective-bargaining representative of our employees in the Hunter unit.

WE WILL NOT deal directly with our employees in the Hunter unit with respect to terms and conditions of employment by soliciting the employees to agree to a reduction in wages.

WE WILL NOT unilaterally change conditions of employment for our unit employees by failing and refusing to make benefit payments to the United Food and Commercial Workers International Sick Benefit Plan, the United Healthcare, Inc. (eye and dental plan), and the United Food and Commercial Workers Union and Employers Legal Assistance Fund on behalf of our employees in the Hunter unit.

WE WILL NOT unilaterally change conditions of employment for our unit employees by failing and refusing to directly pay holiday pay or vacation pay to our employees in the Hunter unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL on request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All barbers (excluding the base manager as well as guards and supervisors, as those terms are defined in the National Labor Relations Act) employed at our barbershops at Hunter Air Force Base.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL make the required benefit payments to the United Food and Commercial Workers International Sick Benefit Plan, the United Healthcare, Inc. (eye and dental plan), and the United Food and Commercial Workers Union and Employers Legal Assistance Fund on behalf of our employees in the Hunter unit.

WE WILL make whole our unit employees for any loss of benefits or expenses ensuing from our failure to make

the required benefit payments to the United Food and Commercial Workers International Sick Benefit Plan, the United Healthcare, Inc. (eye and dental plan), and the United Food and Commercial Workers Union and Employers Legal Assistance Fund, with interest.

WE WILL pay our unit employees vacation pay and holiday pay, with interest.

EDWIN NEGRON D/B/A METRO BARBERS